

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re:)	Chapter 11
)	
Circuit City Stores, Inc., <u>et al.</u> ,)	Case No. 08-35653
)	
Debtors.)	(Jointly Administered)

**MOTION FOR EXAMINATION AND ORDER DIRECTING
CREDITOR, GREEN 521 5th AVENUE, LLC, TO PRODUCE DOCUMENTS
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE RULE 2004**

Creditor, Schimenti Construction Company, LLC (“Movant” or “Schimenti Construction”), respectfully moves the Court to issue an Order directing Creditor, Green 521 5th Avenue LLC (“Green 521”), to appear for examination and produce documents pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure. In support of this Motion, Schimenti Construction represents as follows:

1. On November 10, 2009, Circuit City Stores, Inc. (the “Debtor”) filed a voluntary petition seeking relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.
2. Schimenti Construction has a claim that is partially secured and unsecured against the Debtor arising in part from a contractual agreement for construction and fit-out work of Debtor’s store located at 521 5th Avenue, New York, New York (the “5th Avenue Store” or the “5th Avenue Project”).

Tara L. Elgie (Va. Bar No. 48259)
LeClairRyan, A Professional Corporation
225 Reinekers Lane, Suite 700
Alexandria, VA 22314
Telephone: (703) 684-8007
Facsimile: (703) 647-5982
tara.elgie@leclairryan.com

Counsel for Schimenti Construction Company, LLC

3. Prior to executing the construction contract referenced above, on or about May 3, 2007, Debtor entered into a non residential lease agreement with Green 521 for the premises on which the 5th Avenue Store is located (the “Lease Agreement”).

4. Rule 2004 of the Federal Rules of Bankruptcy Procedure provides that “[u]pon motion of any party in interest, the Court may order the examination of any entity.” Fed. R. Bankr. P. 2004. The scope of the examination is broad, including inquiry into the “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor’s estate.” Id.

5. Examination of Green 521 is necessary for Schimenti Construction to determine whether the Lease Agreement or any other agreement by and between Green 521 and the Debtor provided for allowances for the work performed by Schimenti Construction; and to determine whether the Lease Agreement required either Green 521 and/or the Debtor to hold Schimenti Construction’s earned contract retainage in a separate escrow account.

6. In order to have the examination proceed efficiently, and pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, it is necessary that Green 521 produce the documents described in **Exhibit A** hereto as soon as practicable before the examination.

7. The Creditor proposes to conduct the examination of Green 521 pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219 on **MARCH 13, 2009** at 10:00 a.m. The examination shall be continued from day to day, excluding weekends and holidays, if not completed on that date.

WHEREFORE, Creditor, Schimenti Construction, respectfully requests that the Court issue an Order:

1. Directing Green 521 to designate a representative or other designee to appear for examination and to testify as set forth above and pursuant to Rule 2004 of the Federal Rules of

Bankruptcy Procedure on **MARCH 13, 2009** at 10:00 a.m. at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219; and;

2. Directing Green 521 to produce, pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, all documents described in **Exhibit A** attached hereto at the offices of LeClair Ryan at Riverfront Plaza, East Tower, 951 East Byrd Street, Eighth Floor, Richmond, Virginia 23219 no later than the close of business on **March 6, 2009**.

Respectfully submitted,

CREDITOR,
SCHIMENTI CONSTRUCTION
COMPANY, LLC

/s/ Tara L. Elgie

Movant

Tara L. Elgie (Va. Bar No. 48259)
LeClairRyan, A Professional Corporation
225 Reinekers Lane, Suite 700
Alexandria, VA 22314
Telephone: (703) 684-8007
Facsimile: (703) 647-5982
tara.elgie@leclairryan.com

-AND-

Peter E. Strniste
Patrick M. Birney
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
pstrniste@rc.com
Tel.: (860) 275-8339
Fax: (860) 275-8299

Counsel for Schimenti Construction Company, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February 2009, a true and accurate copy of the foregoing was electronically filed with the Clerk of the Bankruptcy Court for the Eastern District of Virginia, Richmond Division, using the CM/ECF system, which thereby caused the above to be served electronically on all registered users of the ECF system that have filed notices of appearance in this matter, and mailed, by U.S. Mail, first class, postage prepaid, to all persons appearing below:

STEMPEL BENNET CLAMAN & HOCHBERG, P.C.
675 Third Avenue, 31st Floor
New York, New York 10017
Attn: Edmond P. O'Brien, Esq.
Counsel for Green 521 5th Avenue, LLC

Daniel F. Blanks, Esquire
Douglas M. Foley, Esquire
McGuire Woods LLP
9000 World Trade Center
101 W. Main Street
Norfolk, VA 23510
Counsel for Debtors

Dion W. Hayes, Esquire
James S. Sheerin, Esquire
Sarah Beckett Boehm, Esquire
McGuire Woods LLP
Ones James Center
901 E. Cary Street
Richmond, VA 23219
Counsel for Debtors

Gregg M. Galardi, Esquire
Skadden Arps Slate Meagher & Flom, LLC
One Rodney Square
Post Office Box 636
Wilmington, Delaware 19899-0636
Counsel for Debtors

Chris L. Dickerson, Esquire
Skadden Arps Slate Meagher & Flom, LLC
333 West Wacker Drive
Chicago, IL 60606
Counsel for Debtors

Robert Van Arsdale, Esquire
Assistant U.S. Trustee
Office of the U.S. Trustee
701 East Broad Street, Suite 4304
Richmond, VA 23219
Office of the U.S. Trustee

Linda K. Myers, Esquire
Kirkland & Ellis, LLP
200 East Randolph Drive
Chicago, IL 60601
Special Counsel for Debtors

David S. Berman, Esquire
Riemer & Braunstein, LLP
Three Center Plaza, 6th Floor
Boston, Massachusetts 02108
Counsel for Bank of America, N.A.

Bruce Matson, Esquire
LeClairRyan
Riverfront Plaza, East Tower
951 East Byrd Street, 8th Floor
Richmond, Virginia 23219
Counsel for Bank of America, N.A.

Lynn L. Tavenner, Esquire
Tavenner & Beran, PLC
20 North Eighth Street, Second Floor
Richmond, Virginia 23219
Counsel for the Official Committee of Unsecured Creditors

Robert J. Feinstein, Esquire
Pachulski Strang Ziehl & Jones LLP
780 Third Avenue, 26th Floor
New York, New York 10017
Counsel for the Creditors Committee

/s/ Tara L. Elgie

Tara L. Elgie (Va. Bar No. 48259)

LeClairRyan, A Professional Corporation

225 Reinekers Lane, Suite 700

Alexandria, VA 22314

Telephone: (703) 684-8007

Facsimile: (703) 647-5982

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EXHIBIT A

GENERAL INSTRUCTIONS

A. The term “document” includes, but is not limited to, all letters, correspondence, writings, financial statements, rent rolls, operating reports, bank statements, bank reconciliations, receipts, invoices, canceled checks, check registers, cash receipts, leases, deeds of trust, mortgages, contracts, appraiser reports, purchase or sale agreements, proposals, and any other data compilation from which information may be obtained in the actual or constructive control or custody of the Green 521.

B. The phrase “relating to” means consisting of, referring to, reflecting, or being legally, logically, or factually connected in any way with the subject matter.

C. The “Debtor” means Circuit City Stores, Inc.

D. The term “Green 521” refers to Creditor, Green 521 5th Avenue, LLC and any and all parent or subsidiary entities and all of its members, employees or other representatives.

E. The term “Estate” means the bankruptcy estate of the Debtor in accordance with 11 U.S.C. § 541.

DOCUMENTS TO PRODUCE

The documents to be produced include all of the following:

1. Any and all documents relating to Debtor’s liabilities to Green 521.
2. Any and all agreements by and between Debtor and Green 521 including all exhibits and/or amendments thereto.
3. Any and all documents relating to any claims by Green 521 against the Debtor.
4. All purchase and sale receipts and related documentation for equipment, machinery, furniture, and other assets purchased by Green 521 and affixed or installed in the space which is the subject of the Lease Agreement by and between Green 521 and the Debtor.

5. Copies of all leases for personal or real property entered into by and between Green 521 and the Debtor, including any and all leases by and between the Debtor and any business entities related to Green 521.

6. Any and all written communications by and between the Debtor and Green 521.

7. Any and all written communications by and between Green 521 and any person or entity relating to the space which is the subject of the Lease Agreement by and between Green 521 and the Debtor.

8. Any and all documents, including without limitation accounting records and reports, reflecting the amounts due and owing and paid under any lease agreement by and between Debtor and Green 521.

9. Any and all documents, including without limitation accounting records and reports, reflecting allowances or other monies paid or reserved for the construction or fit out of the space which is the subject of the lease agreement by and between Debtor and Green 521.

10. Any and all documents identifying the employees, members or other representatives of Green 521 that communicated with Debtor and/or Schimenti Construction regarding the work performed at the space which is the subject of the lease agreement by and between Debtor and Green 521.